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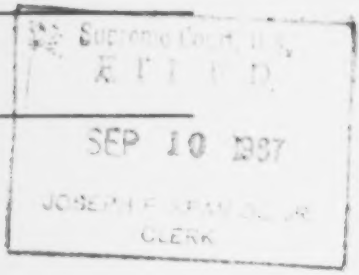

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM 1987

FREDERICK J. ENCALADE, VERGIE T. ENCALADE, AND IRVIN A. CROSS
Appellants

VERSUS

STATE OF LOUISIANA
Appellee

APPEAL FROM DECISION OF THE LOUISIANA SUPREME COURT

JURISDICTIONAL STATEMENT OF APPELLANTS

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Attorney for Appellants

QUESTION PRESENTED FOR APPEAL

1. Can a citizen be constitutionally convicted for "disturbing the peace by interrupting a public assembly" when they are speaking on a matter of community importance at a public meeting in the manner allowed by the rules of the public body and their speech was not obscene, lewd, abusive, violent, nor threatened violence?

PARTIES

The parties to this proceeding are:

Frederick J. Encalade

Vergie T. Encalade

Irvin A. Cross

State of Louisiana

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE APPEAL	9
A. INTRODUCTION	9
B. OVERBREADTH	13
C. VAGUENESS	18
CONCLUSION	27
CERTIFICATE OF SERVICE	28
APPENDIX	29
NOTICE OF APPEAL	1a.
OPINION OF LOUISIANA SUPREME COURT	3a.
OPINION OF LOUISIANA COURT OF APPEAL	5a.

TABLE OF AUTHORITIES

CASES	PAGE
Doran v. Salem Inn, Inc. 422 U.S. 922 (1975)	15
Gooding v. Wilson 405 U.S. 518 (1972)	13, 14, 18, 24
Grayned v. City of Rockford 408 U.S. 104 (1972)	15
Hynes v. Mayor and Council of Borough of Oradell 425 U.S. 610 (1976)	23
Kolender v. Lawson 461 U.S. 352 (1983)	18, 19, 20, 21, 23, 24,
NAACP v. Button 371 U.S. 415 (1963)	13, 14, 16, 18, 21, 23, 24, 25
Thomas v. Collins 323 U.S. 516 (1945)	16
Shelton v. Tucker 364 U.S. 479 (1960)	16, 17
State v. Adams 268 So.2d 228 (La. 1972) . . .	14
State v. Brown 282 So.2d 707 (La. 1973) . . .	14
State v. Harrison 280 So.2d 215 (La. 1973) . . .	14

PAGE

U. S. Constitution,
First Amendment 2, 9, 14, 26

U. S. Constitution,
Fourteenth Amendment 2

28 U.S.C. Section 1257 (2) . . . 1

Louisiana Revised Statutes,
Title 14, Section 103(6) . . 1, 3, 7, 8, 10, 13, 17, 25, 27

OPINIONS BELOW

The decision of the Louisiana Supreme Court, which is not reported, is set out at page 3a. of the appendix.

The Louisiana Court of Appeal decision, reported at 505 So.2d 87 (La. App 4 Cir. 1987) is set out at page 5a. of the appendix.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sect. 1257 (2) because appellants challenged the validity of Louisiana Revised Statute 14:103 (6) and the decision below is in favor of its validity.

The decision of the Louisiana Supreme Court was rendered on June 12, 1987. Notice of Appeal was filed August 31, 1987.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment to the U.S. Constitution provides:

> . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; or

deny any person within its jurisdiction the equal protection of the laws.

Louisiana Revised Statute, Title 14, Section 14:103 (6) in pertinent part, provides:

> Section 103. Disturbing the Peace
>
> A. Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public. . .
>
> (6) Interruption of any lawful assembly of people;
>
> Whoever commits the crime of disturbing the peace shall be fined not more than one hundred dollars or imprisoned for not more than ninety days, or both.

STATEMENT OF THE CASE

Appellants in this matter are Mr. and Mrs. Frederick Encalade and Mr. Irving Cross. They are members of the Fisherman and Concerned Citizens Association of Plaquemines Parish, Louisiana (FCCA).

Along with almost one hundred other members of the FCCA, Mr. and Mrs. Encalade and Irving Cross, went to the local government body, the Plaquemines Parish Commission Council meeting on March 26, 1986. Mr. and Mrs. Encalade and Mr. Cross had been to other meetings of the Council and in fact had been there at the prior meeting to discuss the formation of an Unemployment Task Force in the Parish.

When the one hundred people came into the Council meeting they asked the Council to address the issue of the Unemployment Task Force. Although the

Council had agreed to put other new business on the agenda the Council did not agree to put this matter on the agenda and instead told the 100 or so citizens to come back to another meeting.

The 100 citizens were apparently not pleased that the Council refused to address the issue they came for and began to show their displeasure by talking to Council members and among themselves. Because all of these noisy people and the Council were packed into a small room of approximately 26 by 35 feet the Council took two 10 minute recesses to quiet everyone down.

When the Council reconvened the citizens were still there and still not quiet.

Mr. Irving Cross had asked to speak to the Council about the Unemployment Task Force. When the meeting reconvened

he again asked to be recognized to speak and he was recognized. He then again asked the Council to consider speaking to the issue that the 100 people had come to talk about. However, this time when he continued to speak he was told to stop speaking or be arrested. He continued speaking and was arrested.

By this time the small room was very noisy.

Mr. and Mrs. Encalade were also recognized by the chair and began to speak about the unemployment task force; they were also arrested.

Even though there was testimony by the prosecution that every citizen has a right to speak before the Plaquemines Council for 5 minutes once recognized and there is no evidence that 5 minutes elapsed after being recognized - these 3 defendants were arrested for disturbing

the peace pursuant to R.S. 14:103 (6).

After Mr. and Mrs. Encalade were removed from the Council meeting room the noise continued and the arrests continued.

In all, approximately 30 persons, all black, were arrested and charged with disturbing the peace.

The defendants were arraigned on April 21, 1986 and pled not guilty. A motion to quash the prosecutions on the grounds that R.S. 14:103(6) was unconstitutional on its face and as applied to defendants was timely filed.

Trial of six of the thirty arrested was held on June 18, 1986 before the Honorable Emile A. Martin, III in case number 86-1722 c/w 86-1721. Three of the six defendants were released by directed verdict. Mr. Cross and Mr. and Mrs. Encalade were each found guilty of violating R.S. 14:103(6), sentenced to

pay a $100.00 fine and given suspended sentences of 30 days in jail.

The motion to quash the prosecution because of the constitutional problems of R.S. 14:103(6) was never ruled upon by the trial court.

Counsel for defendants filed a timely notice of appeal and later converted that appeal into a request for supervisory writs to the Court of Appeal for the Fourth Circuit in case number KA 6445 c/w KA 6446. The conviction of defendants was affirmed on March 16, 1987 by a panel consisting of Judges James C. Gulotta, Denis A. Barry and Charles R. Ward.

An application for writs to the Louisiana Supreme Court was timely filed. The Louisiana Supreme Court decided not to hear the case on June 12, 1987. Notice of Appeal was filed on August 31, 1987.

REASONS FOR GRANTING THE APPEAL

A. Introduction

This is a freedom of speech case. Mr. and Mrs. Encalade and Mr. Cross were talking about the creation of an unemployment task force at their local seat of government. They were not obscene, not lewd, not abusive. They were neither violent nor threatened violence.

Although the convictions of Mr. and Mrs. Encalade and Mr. Cross carry penalties which are minor in comparison to most cases reviewed by this Court, there are several reasons for this Court to review and reverse in these proceedings.

The decisions of the Louisiana Courts curtail the protection of the First Amendment to the U.S. Constitution as expressed in several decisions by this Court.

The decisions of the Louisiana Courts allowing LSA - R.S. 14:103 (6) to stand effectively prohibits both harmful conduct and constitutionally protected conduct and is thus overbroad on its face and as applied. The statute is also fatally vague on its face and as applied.

Even though the errors of the Louisiana Courts are legal errors, the factual context of this case is significant. Several important facts need to be kept in mind by this Court while evaluating the opinion below.

Since defendants rested after the prosecution's case was finished, all of the evidence in the record is from the prosection's own witnesses. These facts include:

> 1. About 100 people came to the small Plaquemines Parish council chamber to ask the council to address the issue of unemployment. (See opinion, page 8a.)

2. Prosecution witnesses testified that the council has a rule allowing a person to speak for 5 minutes once recognized by the chair. (Page 13a.)

3. One of the council members testifying for the prosecution said the 5 minute rule applied to anyone recognized while the other prosecution witness thought the 5 minute rule applied to people recognized for items on the agenda. (Page 16a.)

4. The written rule on when the 5 minute rule applies was never introduced by the prosecutor.

5. Mr. Cross was recognized by the chair to speak. (Page 9a.)

6. Mr. Encalade was recognized by the chair to speak. (Page 11a.)

7. Mrs. Encalade was recognized by the chair to speak. (T-125/6)

8. Nothing that Mr. and Mrs. Encalade or Mr. Cross said was obscene, lewd, abusive, violent or threatened violence.

9. No where in the record is there any evidence that any of the three defendants spoke for 5 minutes after being recognized. In fact, the record indicates the 30 people were arrested in a total of about 14 minutes. (T-90/91)

10. Defendant Cross and defendants Encalade were arrested after continuing to speak about the problem of unemployment in Plaquemines Parish and the creation of an unemployment task force. (Pages 10a. and 11a.)

With these facts in mind, counsel turns to the reasons the statute is unconstitutional.

B. OVERBREADTH

The Louisiana Courts dealt with the overbreadth challenge to LSA-R.S. 14:103(6) in five paragraphs. (See pages 19a. - 22a.)

The crux of appellants overbreadth challenge is whether there is protected First Amendment conduct which is, or could be, penalized under this statute in light of this Court's decision in Gooding v. Wilson, 405 U.S. 518, 520-521 (1972).

This statute has never before been construed by the Louisiana Courts so the interpretation in this action is the authoritative construction. Gooding, supra, requires this authoritative construction of the statute to avoid any application to protected speech. at 405 U.S. 520 and 522.

As this Court noted in NAACP v. Button, 371 U.S. 415 (1963):

> Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.
> at 371 U.S. 433.

It seems apparent that a statute which criminalizes any interruption of any lawful assembly as LSA-R.S. 14:103(6) does both apply to protected speech in violation of Gooding, supra, and violate the narrow, specific demand of NAACP v. Button, supra.

This Court and the Louisiana Supreme Court have invalidated other sections of the same statute: Cox v. Louisiana, 379 U.S. 536 (1965) found another section unconstitutionally overbroad; and the Louisiana Supreme Court has struck down three other subsections in the decisions of State v. Adams, 268 So.2d 228 (La. 1972), State v. Harrison, 280 So.2d 215 (La. 1973), and State v. Brown, 282 So. 2d 707 (La. 1973).

Appellants can raise constitutional infirmity on their own behalf and also for others who may be swept within the statute's overbroad grasp. Doran v. Salem Inn, Inc., 422 U.S. 922, 933 (1975) quoting from Grayned v. City of Rockford, 408 U.S. 104, 114 (1972):

> Because overbroad laws, like vague ones, deter privileged activities, our cases firmly establish appellants' standing to raise an overbreadth challenge.

Therefore, this Court must take notice that the statute criminalizes any interruption of any lawful assembly. This means standing up in a church and confronting an unfaithful minister may be criminally punished. Likewise, speaking out in favor of civil rights at a Ku Klux Klan rally may be punished. Literally, any number of combinations of groups of people and unappreciated speech can fall within the statute's reach.

The decision of the Louisiana Courts did not reach these issues. Essentially they characterized appellants' conduct as disruptive and avoided the questions regarding the content of their speech, whether the public was ever disturbed or alarmed, or whether the statute infringed or could infringe on protected speech.

A further difficulty with the Louisiana statute is that there is no demonstration or articulation of any compelling state interest to justify the restraint on speech found in LSA-R.S. 14:103(6) as required by this Court's decisions in Thomas v. Collins, 323 U.S. 516, 530 (1945), and NAACP v. Button, 357 U.S. 449, 463 (1958).

And even if there is a compelling state interest, the limitation on expression must be carefully limited and no greater than necessary to protect the compelling state interest. Shelton v.

Tucker, 364 U.S. 479, 488 (1960):

> In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose.

LSA-R.S. 14:103(6) says:

> Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public ...
> ...(6) Interruption of any lawful assembly of people ...

This statute certainly reaches protected speech. Is it carefully limited? Is it the least restrictive way of reaching a legitimate state purpose? The statute is not. It must be declared invalid, both on its face and as applied to appellants purely political conduct of speaking out about a public issue at a public meeting of a public body.

C. VAGUENESS

Appellants ask this Court to invalidate R.S. 14:103(6) because the statute is unconstitutionally vague.

There are three specific ways the law is impermissibly vague. First, there are no guidelines for enforcement in violation of Kolender v. Lawson, 461 U.S. 352, (1983) which says all criminal laws must be both sufficiently definite and give clear guidelines for enforcement. Second, because this statute infringes into areas of free speech, it is additionally required under NAACP v. Button, 371 U.S. 415, (1963) that the statute operate only with narrow specificity - a requirement that R.S. 14:103(6) fails. And finally, that the statute violates the spirit of the holding in the case of Gooding v. Wilson, 405 U.S. 518, (1972) where the U.S.

Supreme Court struck down a similar Georgia disturbing the peace statute as unconstitutionally vague.

The three paragraph vagueness analysis of the Louisiana Court of Appeal, (Pages 26a - 30a.) addresses only the first part of the two-part Kolender vagueness test - the definition of the words used. There is no attempt to address the remaining issues.

The void-for-vagueness doctrine and the concept of overbreadth are closely related. The problem of vagueness in a statute indicates the statute violates the Fifth and Fourteenth Amendments to the U.S. Constitution, because the statute fails to give fair notice of the prohibited conduct.

Vagueness challenges can be made to all criminal statutes, not just those dealing with constitutionally protected

activity. When however, a vague statute is in the area involving First Amendment activities, special scrutiny is called for by the U.S. Supreme Court

The U.S. Supreme Court itself summarized the test for vagueness in Kolender v. Lawson, 461 U.S. 352 (1983):

> As generally stated, the void-for-vagueness doctrine required that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.

[Citations omitted.] (at 461 U.S. 357). (emphasis supplied).

The Kolender decision introduces a second important element to the vagueness analysis that was ignored by the Louisiana Court - minimal enforcement guidelines. Kolender, supra, at 103 S. Ct. 1858 indicates this new part is most important. In Kolender, the Supreme Court applied the standards for vagueness

to the terms of the statute to see whether, as drafted and construed by the Courts, it contained any standard for determining what a person has to do to satisfy the statute's requirements. Otherwise, it would be unconstitutional because it "vests virtually complete control in the hands of the police to determine whether the suspect has satisfied the statute." Kolender, supra, at 1859.

Once the Court acknowledges that the challenge statute also touches on activities protected by the First Amendment, more serious scrutiny applies. In NAACP v. Button, 371 U. S. 415, (1963) the Court analyzed a statute for overbreadth and vagueness with these observations:

> The' objectional quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused

> or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potentially as the actual application of sanctions. First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity. (at 371 U.S. 433, internal citations omitted.)

Other Supreme Court decisions affirm this more serious scrutiny in the area of speech:

> . . . in the First Amendment area `government may regulate . . . only with narrow specificity.' As a matter of due process; `[n]o one may be required, at peril of life, liberty or property, to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.' The general test of vagueness applies with particular force in review of laws dealing with speech.' `[S]tricter standards of

> permissible statutory vagueness may be applied to a statute having potentially inhibiting effect on speech; herein, because the free dissemination of ideas may be the loser. Hynes v. Mayor and Council of Borough of Oradell, 425 U.S. 610, 620, k 96 S. Ct. 1755, 48 L. Ed 2d 243 (1976).

The minimal enforcement guidelines required by Kolender combine with the requirement of narrow specificity in Button to create a considerable difficulty for R.S. 14:103(6).

Defendants contend that if they had been praising the actions of the Commission Council, rather than criticizing them, the prosecutions would never have taken place.

Because R.S. 14:103(6) is so broad and contains no enforcement guideline it can be used to stifle unpopular opinions such as the ones expressed by applicants.

The Louisiana Court of Appeal did not address these issues and mistakenly analyzed the situation from the wrong

perspective. The opinion looks to see if the defendants had the right to do what they did rather than the real issue of whether the government has the authority to do what it did.

As an aside, it is noteworthy that in the Court of Appeal's analysis of the words of R.S. 14:103(6), on page 29a. of the opinion, the statute can mean "to break in with questions or remarks while another is speaking" at a "company of persons collected in one place for the common purpose." This is hardly the narrow specificity of Button with the adequate enforcement guidelines of Kolender.

The U.S. Supreme Court decision in Gooding v. Wilson, 405 U.S. 518, (1972) underscores the fact that, even if this Court does not feel R.S. 14:103(6) is vague in defendants' factual situation, they are entitled to raise the vagueness

issue as applied to others. See discussion at 405 U.S. 521. This decision analyzes another disturbing the peace statute that also involves speech issues and concludes the statute must be voided for its vagueness.

Likewise, R.S. 14:103(6) can be applied, especially as interpreted as broadly as the Court of Appeal indicates, to many situations without adequate direction to law enforcement. It operates in the First Amendment arena. It does not operate with narrow specificity, nor does it describe the unlawful conduct with particularity.

As the U.S. Supreme Court said in Button, supra:

> These freedoms are delicate and vulnerable, as well as supremely precious to our society.

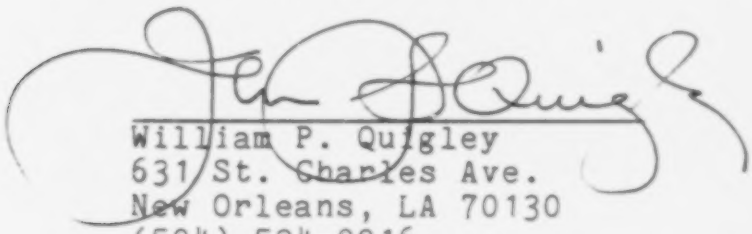
R.S. 14:103(6) in its vagueness and lack of specificity is too crudely fashioned

and too filled with the power of discretionary enforcement to be allowed to regulate in the area of these precious First Amendment freedoms. It must, therefore, be invalidated.

CONCLUSION

For the foregoing reasons, the convictions of appellants should be set aside and LSA R.S. 14:103(6) should be declared unconstitutional.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that on the ____ day of September, 1987, true copies of this Jurisdictional Statement were placed in the U.S. Postal Service, postage prepaid, addressed to counsel of record for the State of Louisiana:

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_____
William P. Quigley

APPENDIX

1. Notice of Appeal filed August 31, 1987.
2. Opinion of the Louisiana Supreme Court denying appellants' writ of review dated June 12, 1987.
3. Louisiana Court of Appeal decision dated March 16, 1987.

SUPREME COURT OF LOUISIANA

NUMBER 87-K-0796

STATE OF LOUISIANA

VERSUS

FREDERICK J. ENCALADE, ET AL.

NOTICE OF APPEAL

Notice is hereby given to this Honorable Court that Frederick J. Encalade, Vergie T. Encalade, and Irvin A. Cross are appealing this matter to the Supreme Court of the United States pursuant to 28 USC Section 1257 (2).

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 31st day of August, 1987 true copies of this Notice of Appeal placed in the U.S. Postal Service, Postage Prepaid, addressed to counsel of record for the State of Louisiana:

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_____
William P. Quigley

THE SUPREME COURT OF THE

STATE OF LOUISIANA

STATE OF LOUISIANA

VS

FREDERICK J. ENCALADE AND

VERGIE T. ENCALADE

STATE OF LOUISIANA

VS

IRVIN A. CROSS

NO. 87-K-0796

- - - - - -

IN RE: Encalade, Frederick J.; Encalade, Vergie T.; Cross, Irvin A.; Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fourth Circuit, Number KA-6445, KA-6446; Parish of Plaquemines 25th Judicial District Court Div. "B" Number 86-1722, 86-1721

- - - - - -

June 12, 1987

Denied

JCW

WFM

JLD

HTL

LFC

DIXON, C.J., would grant the writ.

Supreme Court of Louisiana

June 12, 1987

_____

Clerk of Court
for the Court

STATE OF LOUISIANA	*	NO. KA-6445
VERSUS	*	CONSOLIDATED WITH
FREDERICK J. ENCALADE VERGIE T. ENCALADE		NO. KA-6446
STATE OF LOUISIANA		COURT OF APPEAL
VERSUS	*	FOURTH CIRCUIT
IRVIN A. CROSS	*	STATE OF LOUISIANA

* * * * * * * * * * * * *

AN APPEAL FROM THE

TWENTY-FIFTH JUDICIAL COURT FOR THE PARISH

OF PLAQUEMINES

NO. 86-1722 c/w 86-1721

HONORABLE EMILE E. MARTIN, III

JUDGE

* * * * * * * * * * * * *

JAMES C. GULOTTA

JUDGE

(Court composed of Judges James C. Gulotta, Denis A. Barry and Charles R. Ward)

Hon. William J. Guste, Jr.

Attorney General

New Orleans, Louisiana 70112

Darryl W. Bubrig, Sr.

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AFFIRMED

Defendants--Irvin A. Cross, Frederick J. Encalade and Vergie T. Encalade--seek review of their convictions for disturbing the peace in violation of LSA-R.S. 14:103 (6).[1] We affirm.

---

1. Although defendants timely filed motions for "appeal" their motions are treated as applications for writs of review since no appeals lie from these misdemeanor convictions. LSA-Const. Art. 5 Sect. 10, State v. Banks, 444 So.2d 1243 (La. 1984); State v. Hall, 454 So.2d 409 (La. App. 4th Cir. 1984).

BACKGROUND

Each of the defendants was charged by a bill of information with one count of disturbing the peace by disrupting a meeting of the Plaquemines Parish Commission Council on March 26, 1986. On that date, after the Council had begun its scheduled meeting, defendants and approximately 100 fellow members of the Fisherman and Concerned Citizens Association of Plaquemines Parish (FCCA) filled the council chamber to request that the council address the issue of unemployment in the parish and form an unemployment task force, even though that item was not listed on the council's previously posted agenda for the day.

Although anyone in the audience can request to have new business added to the agenda, the council's procedural rules and practices require a council member to make a formal motion and a majority of

the nine-member council must vote in favor of adding the new item before it can be included for discussion. After being recognized by the council president, defendant Irvin A. Cross raised the unemployment issue. When no council member offered to put the unemployment issue on the agenda of the immediate meeting, the council president advised Cross that the job task force issue would be the first order of business at the council's next scheduled meeting the following week.

Rather than relinquish the floor, however, Cross insisted that he continue to be heard on the job task force resolution. Although the president told him that the subject was closed and that the council was going to move on with its posted agenda, Cross still refused to sit

down and insisted on being heard. Other members of the FCCA also began speaking out of turn and became boisterous by yelling, clapping, and singing. Because the council was unable to continue with its scheduled business, the president called a recess.

When the meeting was again called to order, the uproar continued. During a second recess, a deputy sheriff informed the audience that the unemployment task force issue would be the first order of business on the agenda following week and that the spectators must let the meeting continue in an orderly fashion. The deputy informed the audience that anyone refusing to keep order would be arrested. Defendant Cross still refused to cease speaking, and was escorted from the chamber.

Following Cross's arrest, defendant Frederick J. Encalade was recognized by the President and likewise insisted on discussing the unemployment issue. He was arrested after refusing to yield the floor, despite repeated requests. Encalade's wife, Vergie, was also arrested after saying that her group needed to be recognized and insisting on being heard. Ultimately, after the chamber was cleared of approximately 30 members of the FCCA, the council was able to finish its meeting.

The bills of information brought against the defendants charged them with disturbing the peace in violation of LSA-R.S. 14:103, in that defendants "... did interrupt any lawful assembly of people namely: Plaquemines Parish Commission Council, in such a manner as to disturb

or alarm the public ..." After a trial on the merits, which included the testimony of the council president, a council member, and a sheriff's deputy, the trial judge found all three defendants guilty and sentenced them to pay a $100 fine plus court costs, and to serve 30 days in prison (suspended) and 6 months' inactive probation. Three other defendants in consolidated cases were dismissed on motions for directed verdict.

On review of their convictions, defendants raise essentially three arguments: 1) the insufficiency of the evidence to convict; 2) evidentiary errors in the trial judge's refusal to permit questions about prior meetings of the council; and 3) the unconstitutionality of the disturbing the peace statute.

SUFFICIENCY OF EVIDENCE

At the outset, defendants contend that the evidence, viewed in the light most favorable to the prosecution, is insufficient to prove all the elements of the crime of disturbing the peace. In this regard, defendants point out that their attempt to discuss employment problems before the council was constitutionally protected conduct that was not violent, threatening, abusive, obscene, or in excess of the council's five minute time limit for speaking after being recognized by the council president. Defendants further point out that although the council meeting was a lawful assembly that was in fact "disrupted", the evidence fails to establish that they actually interrupted the Council or disturbed or alarmed the

public as required by the statute, LSA-R.S. 14:103(6). We disagree.

LSA-R.S. 14:103(6) reads as follows:

> "A. Disturbing the peace is the doing of any of the following in such a manner that would foreseeably disturb or alarm the public:
>
> * * *
>
> (6) Interruption of any lawful assembly of people ...."

To convict defendants for violating LSA-R.S. 14:103(6), therefore, the State must prove that they disturbed the peace by interrupting a lawful assembly of people in such a manner as would foreseeably disturb or alarm the public.

Council president, Albert J. Beshel, and council member, Germaine Curley,

positively identified the three defendants as having interrupted the council proceedings by refusing to be quiet and allow the Council to continue its scheduled public meeting in an orderly fashion. The testimony establishes that defendants delayed the meeting to such a degree that, despite the council president's repeated warnings and patient efforts to resolve the matter, order could only be restored after two recesses were called and defendants were forcibly ejected from the council chamber. Under these circumstances, proof was established of all elements of the crime charged.

We further point out that even though the evidence does not establish that any of the defendants behaved violently, obscenely, or abusively, it is

clear that the situation at the meeting was out of hand and that the defendants' individual acts of defiance against the backdrop of the jeering, clapping, and disruptive behavior of the crowd could have foreseeably alarmed the public within the meaning of the statute.

Although council member Curley stated that a person recognized by the chair is entitled to speak for five minutes on any issue, council president Beshel testified that the five minute rule applies only to matters on the agenda. Given this conflict in the testimony, the trial judge could very well have relied on the president's interpretation of the rule to conclude that the defendants' could not invoke the 5 minute time limit as a shield to their arrests. Moreover, because the council

president had repeatedly informed the defendants that the subject of the employment task force was closed until the following week, defendants cannot pervert a technical procedural rule to frustrate the orderly process of the meeting.

Under these circumstances, we conclude that the evidence was sufficient to prove the elements of the crime charged as to each defendant.

EVIDENTIARY ERRORS

We likewise reject defendants' argument that the trial judge erred in refusing to allow questions about prior meetings of the Council and previous political issues discussed with the FCCA. According to defendants, the FCCA and the Council had been through earlier volatile meetings that had been amicably resolved,

and evidence concerning those other meetings was therefore relevant under LSA- R.S. 15:441 and 442.

A trial judge's determinations of the relevance of evidence are discretionary and will not be disturbed absent a clear showing that he abused his discretion. State v. West, 419 So.2d 868 (La. 1982). We find no such abuse in the instant case. Defendants were on trial for disturbing the peace of the Council meeting on March 26, 1981. Information about the other meetings was therefore irrelevant, and the trial judge properly excluded it by curtailing defense counsel's questioning.

CONSTITUTIONALITY OF STATUTE

Defendants further contend that LSA R.S. 14:103(6) suffers from three constitutional infirmities: 1) it is overbroad by prohibiting both harmful conduct and constitutionally protected conduct; 2) it is void for vagueness by failing to give fair notice of the prohibited conduct; and 3) it impermissibly limits expressive activity as applied to the facts of this case. We disagree.

Overbreadth

In support of their argument that LSA-R.S. 14:103(6) unlawfully prohibits constitutionally protected conduct, defendants point out that even though conceivable actions such as "driving motorcycles through a public meeting" would violate the law, the statute as

written impermissibly crosses over into constitutionally protected activities by infringing on their rights of free speech and expressive activity. Defendants point out that in Cox v. Louisiana, 379 U.S. 536, 85 S.Ct. 453, 13 L. Ed. 2d 471 (1965), the United States Supreme Court invalidated a different disturbing the peace statute, LSA-R.S. 14:103.1, as unconstitutionally overbroad. Defendants also cite other Louisiana cases that have invalidated other subsections of LSA-R.S. 14:103 as infringing on protected first amendment activities. See State v. Adams, 268 So.2d 228 (La. 1972); State v. Harrison, 280 So.2d 215 (La. 1973); and State v. Brown, 282 So.2d 707 (La. 1973).[2]

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2. Cox v. Louisiana, supra, and State v.

Harrison, supra, invalidated LSA-R.S. 14:103.1 which prohibited a breach of the peace by crowding or congregating in or upon a public place and failing or refusing to move on when ordered to do so by any law enforcement officer.

State v. Adams, supra, held former LSA-R.S. 14:103(A) (2) unconstitutional on its face and affirmed a judgment quashing a bill of information charging a defendant with breaching the peace by using "... unnecessarily loud, offensive and insulting language in such a manner as would foreseeably disturb and alarm the public."

State v. Brown, declared former LSA R.S. 14:103 (B)(2) unconstitutional and affirmed the quashing of a bill charging the defendant with having breached the peace, "...in that he congregated and

assembled in a street, road or highway, and in or around a public building, and engaged in loud and boisterous talking and other disorderly conduct...."

Although we do not quarrel with the authorities cited by the defendants or the established doctrine against statutory overbreadth, the cited cases have not construed LSA-R.S. 14:103(6), the particular statute involved in the instant case.

LSA-R.S. 14:103(6) narrowly proscribes the disruption of a lawful assembly in a manner that would foreseeably disturb or alarm the public. There is no federal or state constitutional right of a citizen to disrupt such an assembly in such a manner. As noted by the United States Supreme Court in Cox v. Louisiana, supra, "The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place or at

any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excess of anarchy." Cox, supra, at p. 464. The First and Fourteenth amendments do not give absolute protection to every individual to speak whenever or wherever he pleases, or to use any form of address in any circumstances that he chooses. Cohen v. California, 403 U.S. 15, 91 S. Ct. 1780, 29 L.Ed. 2d 284 (1971).

Applying these principles to the statute at hand, we conclude that there is no constitutional right, federal or state, that permits a citizen to disrupt a lawful meeting of a governmental body by demanding that the body discuss an issue that is not on its scheduled agenda and refusing to relinquish the floor to

allow the body to continue its orderly business. Free speech does not belong exclusively to the vociferous. Rules for conducting public meetings must be observed so that everyone is given a chance to speak and be heard. Sometimes, as in this case, a speaker must wait his turn. To permit defendants to commandeer the public meeting and force the parish council to address an issue at defendants' whim would infringe on the rights of other less strident citizens to assemble and conduct governmental business without disruption.

By prohibiting the interruption of any lawful assembly of people in such a manner that would foreseeably disturb the people or alarm the public, LSA-R.S. 14:103(6) narrowly proscribes unprotected activity and does not infringe on

defendants' constitutional rights. Thus, this portion of the disturbing the peace statute is not constitutionally overbroad.

Vagueness

We likewise reject defendants' contention that the LSA-R.S. 14:103(A)(6) is void for vagueness by failing to define the criminal offense such that ordinary people can understand what conduct is prohibited and the police are not encouraged to enforce the statute arbitrarily and discriminatorily. According to defendants, the statute is unconstitutionally vague because there are no guidelines for its enforcement, it infringes on the first amendment rights without being narrow and specific, and fails to limit the criminal prohibition to "fighting words".

Under the Fourteenth Amendment and

LSA-Const. Art. 1, Sect. 13, a penal statute must describe the unlawful conduct with such particularity and clarity that ordinary persons of reasonable intelligence are capable of discerning its meaning and conforming their conduct thereto. A statute that fails to inform an accused of the "nature and cause" of an offense under the State constitution will also ordinarily fail to provide the "fair notice" of proscribed described conduct required by the Federal Constitution. State v. Gisclair, 363 So.2d 696 (La. 1978). A detailed specification of the various ways in which the crime can be committed is not required, however, and its suffices that the phraseology has a well-known or commonly understood meaning. State v. Gisclair, supra,; State v. Heck, 307 So.2d 332 (La. 1975); City of Baton Rouge

v. Norman, 290 So.2d 865 (La. 1974). Nonetheless, statutes that threaten to impede First Amendment rights are examined for vagueness under a particularly strict standard. Hynes v. Mayor and Council of Borough of Oradell, 425 U.S. 610, 96 S. Ct. 1755, 48 L. Ed. 2d 243 (1976); NAACP v. Button, 371 U.S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963).

In light of these authorities, we conclude that LSA-R.S. 14:103(A) (6) particularly and clearly described the unlawful conduct prohibited. The activity proscribed by the statute is the "interruption" of any lawful assembly of people "in such a manner as would foreseeably disturb or alarm the public". Taken in its usual sense, the word "interrupt" as defined in Webster's,

means "to stop or hinder by breaking in", "to break the uniformity or continuity of", "to break in upon an action", or, especially, "to break in with questions or remarks while another is speaking". The phrase "lawful assembly" is likewise sufficiently definite as a company of persons collected in one place for a common purpose. Indeed, in the instant case, all parties concede that the scheduled meeting of the Plaquemines Parish Commission Council is a lawful assembly. Similarly, the phrase "in such a manner that would foreseeably disturb or alarm the public" can be readily understood by a person of ordinary intelligence. A reasonable person would know that the statute does not prohibit a disruption of a meeting by a deliberate refusal to relinquish the floor in

violation of the reasonable procedural rules of the governing body.

Application of the Statute

We further conclude that the statute as applied to defendants' behavior did not infringe on their constitutional rights.

Defendants interrupted a duly authorized meeting of the parish council by refusing to respect the council's procedural rules for the orderly handling of its business. Their behavior went beyond authorized debate at a public meeting and amounted to a disruption of the constitutional rights of other parish citizens' to a peaceful assembly. Significantly, defendants had other means of legitimately voicing their concerns and could have exercised their rights to free speech by peacefully picketing or by

waiting for the unemployment issue to be placed on the agenda of the commission council's next meeting.

Defendants' First Amendment rights do not allow them to seize the rostrum at a public meeting and voice their opinions in violation of the rights of other citizens who have previously scheduled business. To allow defendants to disrupt a public meeting whenever and wherever they please would result in anarchy and a disintegration of our entire government by law. Defendants violated the disturbing the peace statute, and the trial court properly convicted them.

Accordingly, the convictions are affirmed.

AFFIRMED

87 439

Supreme Court, U.S.
FILED
SEP 10 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM 1987

FREDERICK J. ENCALADE, VERGIE T. ENCALADE,
AND IRVIN A. CROSS
Appellants

VERSUS

STATE OF LOUISIANA
Appellee

APPEAL FROM DECISION OF THE LOUISIANA
COURT OF APPEAL FOURTH CIRCUIT

SUPPLEMENTAL APPENDIX TO THE JURISDICTIONAL STATEMENT

William P. Quigley
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Attorney for Appellants

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Supplemental Appendix to the Jurisdictional Statement

The original Jurisdictional Statement contained:

		Page
1.	Notice of Appeal filed August 31, 1987.	1a-2a
2.	Opinion of Louisiana Supreme Court denying appellants write of review	3a-4a
3.	Louisiana Court of Appeal decision dated March 16, 1987	5a-31a

This Supplemental Appendix contains the following additions:

4.	Notice of Appeal to the Louisiana Court of Appeal, Fourth Circuit, dated September 8, 1987	32a
5.	Certificate of Service	33a
6.	Notice to Louisiana Supreme Court of filing of Appeal to the Louisiana Court of Appeal, Fourth Circuit, dated September 8, 1987	34a
7.	Certificate of Service	35a

STATE OF LOUISIANA

COURT OF APPEAL

FOURTH CIRCUIT

NUMBER KA-6445 C/W KA-6446

STATE OF LOUISIANA

VERSUS

FREDERICK J. ENCALADE, VERGIE T. ENCALADE

AND IRWIN A. CROSS

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

Notice is hereby given to this Honorable Court that Frederick J. Encalade, Vergie T. Encalade and Irwin A.Cross are appealing the decision of this Court dated March 16, 1987 to the U.S. Supreme Court pursuant to 28 U.S.C. Section 1257 (2).

Respectfully submitted,

William P. Quigley
631 St. Charles Ave.
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(504) 524-0016

CERTIFICATE OF SERVICE

This is to certify that on the eighth day of September, 1987 true copies of this Notice of Appeal were placed in the U.S. mail, postage paid, addressed to counsel of record for the State of Louisiana:

William Guste,
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234 Loyola Ave.
New Orleans, LA 70112

Gilbert V. Audry, III
Assistant District Attorney
Pointe-a-la-Hache, LA 70082

_____
William P. Quigley

(FILED IN COURT SEPTEMBER 8, 1987)

SUPREME COURT OF LOUISIANA

NUMBER 87-K-0796

STATE OF LOUISIANA

VERSUS

FREDERICK J. ENCALADE, ET AL

NOTICE OF FILING NOTICE OF APPEAL IN FOURTH CIRCUIT COURT OF APPEAL

Notice is hereby given to this Court that the attached Notice of Appeal to the U.S. Supreme Court has been filed with the Louisiana Court of Appeal, Fourth Circuit, pursuant to 28 U.S.C. Section 1257(2) and Rule 10.3 of the U.S. Supreme Court Rules.

Respectfully submitted,

William P. Quigley
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New Orleans, LA 70130
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William P. Quigley

(FILED IN COURT SEPTEMBER 8, 1987)

CERTIFICATE OF SERVICE

I have today sent by U.S. Mail a copy of this Supplemental Appendix to the Jurisdictional Statement to:

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